

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PROMOTE INNOVATION LLC,)	
)	Case No. 2:10-cv-233
Plaintiff)	
)	COMPLAINT FOR
v.)	FALSE PATENT MARKING
)	
MEDTRONIC, INC.,)	<u>JURY TRIAL DEMANDED</u>
)	
Defendant.)	

Plaintiff PROMOTE INNOVATION LLC alleges as follows:

NATURE OF THE CASE

1. This is an action for false patent marking brought under Section 292 of the Patent Act (35 U.S.C. § 292). This action is filed by PROMOTE INNOVATION LLC as a *qui tam* relator on behalf of the United States of America.

PARTIES

2. Plaintiff PROMOTE INNOVATION LLC is a Texas limited liability company with a principal place of business in Houston, Texas.

3. Defendant MEDTRONIC, INC. is a Minnesota corporation.

JURISDICTION AND VENUE

4. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over defendant. Defendant conducts business within the State of Texas. Defendant offers for sale, sells, marks, and/or advertises the products that are the subject of this complaint in the United States, the State of Texas, and the Eastern District of Texas.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a).

FACTS

7. Defendant has marked and/or continues to mark its stent-related products (including at least the following products: ENDEAVOR Sprint Zotarolimus-Eluting Coronary Stent System, Medtronic Driver, Medtronic Vascular Micro-Driver, Medtronic Driver MX², Medtronic

Vascular Micro-Driver MX², ENDEAVOR Zotarolimus-Eluting Coronary Stent System, and Medtronic Micro-Driver) with U.S. Patent Nos. 6,190,358 and 6,605,057.

8. U.S. Patent Nos. 6,190,358 and 6,605,057 were declared unenforceable for fraud on the Patent Office by the United States District Court for the Eastern District of Texas on August 28, 2008. *See Medtronic Vascular, Inc. v. Boston Sci. Corp.*, 2008 U.S. Dist. LEXIS 67819 (E.D. Tex. Aug. 28, 2008).

9. It was a false statement for defendant to mark any of its products with U.S. Patent Nos. 6,190,358 and 6,605,057.

10. Defendant revised package inserts for its stent-related products in 2009, after U.S. Patent Nos. 6,190,358 and 6,605,057 were declared unenforceable for fraud on the Patent of Office.

11. At least by February 11, 2009, defendant announced to the Court that they had settled false marking claims brought against it in the *Boston Sci. Corp.* litigation, and that such claims should be dismissed with prejudice.

12. Defendant asked the United States District Court for the Eastern District of Texas to vacate its judgment of unenforceability. The United States District Court for the Eastern District of Texas denied defendant's request.

13. Thereafter, defendant continued to falsely mark with U.S. Patent Nos. 6,190,358 and 6,605,057.

14. Defendant has decades of experience applying for patents, obtaining patents, licensing patents, and/or litigating in patent infringement lawsuits.

15. Defendant knows that a patent that has been declared unenforceable for fraud on the Patent Office does not cover any product.

16. Defendant knew that it was a false statement to mark its stent-related products with U.S. Patent Nos. 6,190,358 and 6,605,057.

CLAIM

17. For the reasons stated in paragraphs 7 to 16 above, defendant has violated section 292 of the Patent Act by falsely marking its products with intent to deceive the public.

PRAYER FOR RELIEF

Plaintiff thus requests this Court, pursuant to 35 U.S.C. § 292 to do the following:

A. Enter judgment against defendant and in favor of plaintiff for the violations alleged in this complaint;

B. Order defendant to pay a civil monetary fine of \$500 per false marking offense, or an alternative amount a determined by the Court, one-half of which shall be paid to the United States;

C. Grant plaintiff such other and further relief as it may deem just and equitable.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: July 9, 2010

Respectfully submitted,

/s/ Zachariah S. Harrington
Zachariah S. Harrington (lead attorney)
Texas Bar No. 24057886
zac@ahtlawfirm.com
Matthew J. Antonelli
matt@ahtlawfirm.com
Texas Bar No. 24068432
Larry D. Thompson, Jr.
Texas Bar No. 24051428
larry@ahtlawfirm.com
ANTONELLI, HARRINGTON &
THOMPSON LLP
4200 Montrose Blvd, Suite 430
Houston, TX 77006
(713) 581-3000

Attorneys for PROMOTE INNOVATION LLC